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Neither succession nor possession nor property nor contract started from direct legislation or from direct conflict [*i.e.*, litigation]. Succession has its roots in the necessary arrangements of the household on the death of its manager, property began with occupation, possession is reducible to *de facto* detention, the origins of contract go back to the customs of barter. Disputes as to right in primitive society are pre-eminently disputes as to the application of non-litigious custom" (p. 368). Hence the jurist must study the social conditions out of which non-litigious customs arose in the past and the social conditions out of which they still arise. For all the law is not in the books. He must also study the logical implications of the principles which he finds in the legal materials. He will find principles and conceptions, although the actual rules and doctrines and the actual practice of applying them will not be wholly rational nor entirely reducible to systematic simplicity. At this point philosophical method, which Vinogradoff slights, plays its part. The philosophical jurist sets up an ideal form of the existing type of society, an ideal form of the principles and conceptions found in the existing legal materials, an ideal conception of the end of the legal order, and these are employed both consciously and sub-consciously in judicial finding and application of law as well as in legislation and juristic writing. In this admirable paragraph we have the real introduction to historical jurisprudence.

ROScoe POUND.

A HAND BOOK OF PRACTICE UNDER THE CIVIL PRACTICE ACT OF NEW YORK.

By Carlos C. Alden. New York: Baker, Voorhis & Co. 1921. pp. vi, 340.

Dean Alden of the Law Department of Buffalo University has here sought to present a hand book, primarily for the use of students, of the practice of New York, under the Civil Practice Act which became effective October 1, 1921. The book serves its acknowledged purpose, but, like all outlines of a new system of procedure, its use to the practitioner must be confined to its general suggestions. A change or readjustment of any method of practice immediately becomes the subject of interpretation. A text book which under such circumstances attempts to set forth the practice in detail soon becomes obsolete. The use, however, of this outline, should be helpful to the student. After familiarizing themselves with the general principles of the substantive law, most students regard with confusion the mechanics by which such principles are applied and rights established and enforced. Experience has shown the difficulty of teaching, academically, the technique of procedure. The solution of problems of actual practice, alone, instruct with any degree of thoroughness in the art of the practitioner. A well considered outline containing the organization of the courts, by whom, when and how remedies are employed, should, however, give to the student a general working knowledge of the subject. The usefulness of such a work, especially during a period of transition, is quite apparent.

The plan and scope of Dean Alden's work, as indicated in the table of contents, are limited to presenting in a simple, orderly and logical manner such an outline. The author points out that the present New York system of practice which became effective only last October is the result of a progressive development extending over a period of seventy-five years, and is based substantially upon the former Code of Civil Procedure in a re-arranged form. Into the first Code of Procedure of 1848 and those subsequently enacted, there gradually crept many provisions not procedural in character. By the readjustment, basic matters of civil practice are incorporated into the new "Civil Practice Act" which is supplemented by rules of court known as "Rules of Civil Practice," into which has been placed many of the details of practice heretofore contained

in the code. The provisions relating to the procedure of the Surrogate's Court, Justices' Court, Court of Claims and New York City Court, formerly contained in the old code, are excluded from the new practice act and placed into special acts of their own. As a result, the present act contains about one-half the number of sections of the old code. The present hand book covers only the Civil Practice and Surrogate's acts, although reference to the other acts is made in several of the chapters. Many of the 300 rules of court supply important details and would have justified a fuller consideration than the references made by the author.

The chapter covering the organization and jurisdiction of the civil courts in a few words describes the judicial system. The writer errs in stating (p. 7) that the first department consists of New York County, by failing to mention the County of the Bronx. While the Constitution contains this provision, New York County has been interpreted to mean the territory included in that county at the time the Constitution was adopted. As Bronx County was subsequently created out of New York County, it is and always has been regarded as a part of the first department. The paragraph on the Superior City Courts might have been omitted, as these courts have all been abolished and reference to them is quite unnecessary in a hand book of the practice of today. In the paragraph describing the various branches of the Supreme Court, mention of the Appellate Term could appropriately have been made. In treating of the City Court of the City of New York, the language would indicate that the court's jurisdiction is limited to the Borough of Manhattan, while, in fact, it extends to the territory included in the City of New York before consolidation into the Greater City, which brings the Borough of the Bronx within its jurisdiction.

Chapter V on limitations upon the prosecution of actions occupies only a few pages, yet makes clear the main principles of this ever confusing subject to the student. The author has wisely devoted the greater part of the book to Chapter VI "Procedure in an Action." Starting with the naming of the parties, the subject is considered from the point of obtaining jurisdiction, on to the general principles of pleadings, including instructive illustrations; through the method of testing the sufficiency of pleadings to provisional remedies and the preparation for the trial and the trial itself. The execution of the court's judgment and finally the appeals to the various appellate tribunals conclude the chapter. While some of the subjects could have been considered a little more fully, yet as a primer, it describes logically and plainly the course of litigation. The paragraphs covering the trial are especially useful as they put into a ready and concise form a subject which often unnecessarily perplexes both students and lawyers. The importance of the rules of court is in this chapter emphasized. The author constantly refers to them by number and in one or two instances sets out a rule in full. A fuller consideration could well have been given to the rules themselves, as a familiarity with them is necessary to apply many of the provisions of the new Practice Act.

In Chapter IX the practice of the Surrogates' Court is treated in the same helpful manner as is the subject of general practice in the preceding chapters. Special proceedings and provisions respecting particular actions are explained in conclusion. The hand book succeeds in presenting in an orderly and concise form an outline of the system of procedure of New York. All practice text books are subject to the criticism of incompleteness. The present work does not pretend completeness but does present in a comprehensible manner something of real use to the beginner. Time alone will not alter its usefulness as a general chart of the system, but it will no doubt see many of the details become obsolete by reason of the interpretation of the courts.

MORTIMER BOYLE.